IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY, THE TWENTYFIRST DAY OF SEPTEMBER
TWO THOUSAND AND FOUR
PRESENT
THE HON'BLE MR JUSTICE J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 22245 of 2003

Between:
S.Prabhakara Rao s/o late S.Nagabhushana Rao,
Aged about 70 years, Occupation: Government Service-Superintendent (Retired), O/o the Assistant Director of Agriculture (Soil Conservation), Hanumakonda, Warangal,
Presently R/o House No.6-4-150, Nagula Sandu,
Brahmansada, Hanumakonda, Warangal District.

..... PETITIONER

AND
1. The State of Andhra Pradesh, rep. by
   the Secretary to Government, A.P.,
   Agriculture & Cooperation Department,
   A.P. Secretariat Buildings, Hyderabad.
2. The Commissioner & Director of Agriculture,
   Andhra Pradesh, OppL L.B.Stadium,
   Gunfoundry, Hyderabad.
3. The Assistant Director of Agriculture,
   (Soil Conservation), Hanumakonda, Warangal.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Certiorari calling for the records relating to the impugned G.O.Rt.No. 816, Agriculture & Cooperation (Vig.I) Dept, dated 3-8-2002 issued by the 1st respondent and the judgment dated 8-9-2003 in OA No.10183 of 2002 of the Hon'ble Andhra Pradesh Administrative Tribunal at Hyderabad and quash the same and

hold that the petitioner is entitled for full service pension with all consequential benefits.

For the Petitioner: Mr.S.Prabhakar Rao, Party-in-person

For the Respondents : Government Pleader for Service-I

Amicus Curiae : Sri S.Satyanarayana Prasad, Senior Counsel

The Court made the following

::ORDER::

(Per Hon'ble Sri Justice G. Raghuram)

By the order in G.O. Rt. No. 816 Agriculture and Cooperation (Vig.I) Department, dated 3.8.2002, the State Government in exercise of powers under Rule 9 of the A.P. Revised Pension Rules 1980 (Pension Rules) visited the petitioner with the punishment of withdrawal of the entirety of pension permanently and with prospective effect besides recovery of the loss of Rs.2,45,839.41 ps, determined as his share of the total loss occasioned to the State and in respect of which the petitioner was convicted along with another officer B.Relaram, the former Assistant Agricultural Officer (AAO), Parkal. Challenging the order, the petitioner filed OA No.10183/2002 before the A.P. Administrative Tribunal (Tribunal). The Tribunal by the order dated 8.9.2003 allowed the petitioner's application in part. The order of the Government to the extent it directed

recovery of Rs.2,45,839.41 ps, was set aside. However, the withdrawal of the pension of the petitioner in full was upheld. Aggrieved by this judgment of the Tribunal this writ petition is filed.

The proceedings initiated against the petitioner by the State had a meandering, chequered and protracted history. The chronology of the salient events leading to the writ petition may briefly be noticed:

(A) The petitioner was first appointed as an Assistant Tractor Operator w.e.f. 15.2.1955 in the erstwhile Hyderabad State and in July 1977 he was posted as a Godown Supervisor in the category of LDC, in O/o the Asst. Agricultural Officer (Inputs) Parkal, Warangal District. In June 1980 the Assistant Director of Agriculture visited the office of the AAO, where the petitioner was working as a Godown Supervisor, conducted physical verification of the stocks in the Godown and discovered shortages in the stocks of fertilisers, seeds and pesticides. The petitioner and Relaram, the then AAO were placed under suspension pending enquiry and a criminal case was

registered against them.

(B) A criminal case was lodged against the petitioner and the then Agricultural Officer Sri B.Relaram, with the PS kParkal, on 30.6.1980 in Cr.No. 46/80 u/Sec. 409 IPC. The case was subsequently transferred to the CBCID, Hyderabad, for investigation on 9.6.1982. The CBCID filed the charge sheet in CC Nos. 224 to 226 of 1990. However, the petitioner was reinstated into service pending further action in the prosecution and departmental enquiry, on 30.1.1981 and he joined duty on 30.1.1981.

(C) On 16.10.1981 a charge memo was issued against the AAO and the petitioner alleging *inter alia* that the charged officers were responsible for causing loss in an amount of Rs.4,80,094.64 besides alleging that they failed to produce the essential records, registers and other documents for presentation for audit. During the years 1984 to 1989 enquiry officers to conduct enquiry against the petitioner and the AAO were changed on a number of occasions. In G.O. Rt. No. 910 dated 10.5.1988 another enquiry officer was appointed to pursue

departmental enquiry against the petitioner. Challenging this order, the petitioner filed R.P.No. 30516/89 before A.P. Administrative Tribunal. No stay of the enquiry proceedings was however granted in this R.P. On 18.9.1989 the enquiry officer (appointed under G.O.Rt. No. 910) issued a charge memo alleging that the petitioner had misappropriated an amount of Rs.5,53,847.47 ps, and had thereby caused corresponding loss to the State Government. While the disciplinary proceedings were still in process, the petitioner retired on superannuation in June 1991. He thereafter, filed OA No.36185/91 before the Tribunal alleging that the protracted disciplinary proceedings for well over a decade had prejudiced him and despite submission of the enquiry report in August 1990, no orders had been passed. In O.A. 36185/91, on 13.8.1991 the Tribunal issued the following interim direction:

"After careful consideration, it is felt that the respondents have to be given an opportunity to complete the enquiry within six months if they choose to pursue the same. If the enquiry is not completed within this period, it is deemed that the enquiry is dropped. As far as pensionary benefits are concerned, he (the petitioner)

may be given an amount as admissible under the Rules, if it is not proposed to withhold the entire pension. This exercise will be done within a period of one months from the date of receipt of this order."

(D) By the order dated 16.11.1993 the Tribunal by a common order disposed of R.P. No.30516/89, O.A. No. 36185/91 and a Contempt Application CA No. 368/92. The C.A. was filed alleging non-implementation of the interim order in O.A. No. 36185/91. The Tribunal declared that the enquiry initiated against the petitioner in 1980 must be deemed to have been closed. This declaration was made in view of the fact that not only was the enquiry not completed within the time stipulated in the interim order of the Tribunal dated 13.8.91, but even by the date of the judgment of the Tribunal viz., 16.11.1993. In its judgment the Tribunal also disposed of M.A. No. 170/92 whereby the petitioner sought a direction for sanction of full gratuity and pension. In the counter affidavit thereto the State had contended that the ultimate loss for which the applicant was directly responsible is Rs. 11,814.12, out of which Rs.3,000 had already been recovered and an amount of Rs.8,000 was

retained from the gratuity payable to the petitioner. In view of the petitioner acceding to the adjustment of the amount of Rs.8,000 towards recovery of loss caused to the State, the Tribunal directed that after retaining the amount of Rs.8,000, action should be taken to release full pension, arrears of pension and computation of pension to the petitioner, within a period of three months from the date of receipt of the order. In conclusion, however, the Tribunal observed as under:

> " So far as any subsequent proceedings are concerned they should not be linked up with earlier proceedings and the respondents are at liberty to proceed as per law if they so desire."

Aggrieved by this order of the Tribunal, the State preferred SLPs before the Supreme Court. The Supreme Court by the order dt 6.2.1995 dismissed these SLPs. Consequently by an order of the State Government dated 16.3.1995 the Director of Agriculture was directed to sanction the balance 30% pension, computation of pension and to release the arrears of pension. This order was passed by the State Government in view of C.A. no.132/94 filed by the petitioner alleging violation of the order of the Tribunal dated 16.11.1993.

(E) Earlier by a memo dated 30.11.1992 pursuant to the 3 charges framed against the petitioner (viz., gross negligence in maintenance of records, systematic and persistent flouting of the codal provisions thereby causing huge loss to the Government, misappropriation of an amount of Rs.5,53,847.46 ps, and responsibility for deficit of stocks) and after receipt of the enquiry report, the Government had come to a provisional conclusion to award a suitable punishment to the petitioner u/Rule 9 of the Pension Rules. The Government provisionally decided to recover from the petitioner Rs.9,139.02 for which amount the petitioner was directly responsible as also from the petitioner and Sri Relaram an amount of Rs.4,54,201.26, which the petitioner and the AAO were found jointly to have misappropriated. The petitioner was called upon to show cause why the above penalties be not imposed on him. The petitioner submitted his explanation and by a memo dated 27.12.1995 he was afforded an opportunity to peruse the records he wanted to and submit his defence.

(F) The petitioner filed O.A. No.440/96 challenging the show cause notice dated 27.12.95. The Tribunal by an interim order dated 30.1.96 granted interim stay of further proceedings pursuant to the memo dated 27.12.95 and the earlier charge memo dated 30.11.92. In this order the Tribunal also observed that the State does not appear to have considered it appropriate to take any action against the concerned authorities who were responsible for the inordinate delay in not pursuing the enquiry seriously subsequent to 1980 and that the respondents should report to the Tribunal as to why no action was taken against the concerned authorities responsible for the inordinate delay in conducting the enquiry against the petitioner.

(G) The Court of the Additional First Class Magistrate, Warangal, in C.C. Nos. 224, 225 & 226 of 1990 convicted the AAO and the petitioner who figured as accused 1 and 2, for the offence punishable u/Sec. 409 IPC and sentenced each of them to suffer rigorous imprisonment for one year and to

pay a fine of Rs.500 each, in default to suffer simple imprisonment for a month.

(H) In view of the conviction recorded against the petitioner in C.C. Nos. 224 to 226 of 1990, the State Government by a memo dated 22.8.98 issued a show cause notice to the petitioner intimating the provisional decision to permanently withdraw his pension u/Rule 9 of the Pension Rules.

(I) The notice dated 22.8.98 was challenged by the petitioner before the Tribunal in O.A. No. 7219/98. By an interim order dated 16.10.98 the Tribunal declined to stay the operation of the Government memo and directed the petitioner to submit his explanation and the State Government was directed to examine his explanation and pass a reasoned order expeditiously and in any event within a month from the date of receipt of the petitioner's explanation. The petitioner submitted his explanation dated 26.10.98.

(J) By another memo dated 11.9.2001 the State Government in supersession of all the earlier show cause notices (including the memos dated 30.11.92, 27.12.95 and

22.8.98), issued a fresh show cause notice u/Rule 9 of the Pension Rules proposing permanent and prospective stoppage of the entirety of pension and recovery of the alleged loss of Rs.2,45,839.41 from the petitioner which amount is stated to have been determined as his share for the loss caused in respect of the offences for which he was prosecuted and convicted along with the then AAO. The petitioner submitted his explanation dated 19.10.2001. The principal objections of the petitioner to this proposal under the Pension Rules as urged in his explanation dated 19.10.2001 were –

i) The State cannot simultaneously proceed with the departmental and criminal proceedings on the same set of irregularities;

ii) The petitioner was prosecuted without the prior sanction of the State and hence his conviction is invalid; and

iii) As under Rule 9 of the Pension Rules the events in respect of which he is being proceeded against occurred more than 4 years prior to the

institution of the judicial proceedings and as he had retired from service on 30.6.1991 while the criminal court took cognisance of the offence he was charged with on 20.12.1991, the prosecution was incompetent.

iv) The petitioner urged that as his conviction was incompetent for the aforesaid reasons, he could not be proceeded against on the basis of such a conviction.

(K) By the order of the State Government dated 3.8.2002 in G.O. Rt. No. 816 all the objections of the petitioner were rejected and the State Government imposed on the petitioner the punishment of permanent and prospective withdrawal of his pension in full and directed recovery of the loss of Rs.2,45,839.41 ps, apportioned as the petitioner's share of the loss occasioned to the State in respect of the offence committed by him for which he was convicted along with the then AAO, u/Rule 9 of the Pension Rules.

(L) By the judgment dated 8.9.2003 O.A.

No.10183 of 2002 filed by the petitioner (challenging the State Government's order in G.O.Rt.No. 816), was partly allowed as already stated.

(M) The petitioner filed Criminal Appeals Nos. 97, 98 & 99 of 1997 against the conviction and sentence in C.C. Nos. 224, 225 & 226 of 1990 recorded by the trial court. By the judgment dated 23.9.2002 the Court of II Addl. Sessions Judge, Warangal, dismissed the appeals and confirmed the conviction and sentence as recorded by the trial court.

(N) O.A. No. 400/96 was disposed of by the Tribunal on 20.1.2003. The Tribunal on noticing that the respondents had stated that the pension and arrears of pension as well as the computation of pension had been released and that the petitioner was also paid the leave encashment benefit, family benefit fund and group insurance amounts, disposed of the O.A. holding that no further orders are necessary.

(O) Against the appellate order in Crl.A. Nos. 97, 98 & 99 of 1997 confirming the conviction and sentence recorded against

the petitioner, he filed Crl. R.C. Nos. 1373, 1374 & 1375 of 2002 before this court. This court by separate judgments dated 12.3.2004 disposed of the revisions preferred by the petitioner. While confirming the conviction and the conclusion of the courts below that the petitioner had misappropriated part of the sale consideration, this court modified the sentence by enhancing the fine imposed on the petitioner from Rs.500 to 5,000 in default to suffer simple imprisonment of six months, while reducing the sentence of rigorous imprisonment recorded by the trial court and confirmed by the appellate court. The conviction of the petitioner u/Sec. 409 IPC was thus confirmed all through including by this court. The modification of the sentence was made by this court in the revisions, on the ground that the petitioner had undergone the trauma of prosecution for about 24 years and therefore a lenience in the quantum of sentence was in order.

In its order dated 08-09-2003 in O.A.No. 10183 of 2002, against which the present writ petition is filed, the Tribunal was considering the validity of the

Government order in G.O.Rt.No.816 dated 03-08-2002. The Tribunal upheld the penalty of withholding of the full pension of the petitioner. Insofar as the order directed recovery of an amount of Rs. 2,45,839-41 from the petitioner, the Tribunal set aside this part of the order. The Tribunal held that there was neither any material for the determination of this amount nor was any inquiry held on the basis of which the amount or the petitioner's liability was arrived at. The Tribunal also observed that the amount determined did not tally with the amounts alleged in the CC's *qua* the judgments dated 16-07-1997 of the Court of learned I-Additional Munsif Magistrate, Warangal in C.C.Nos. 224 to 226 of 1990. Even the show cause notice dated 11-09-2001, which preceded G.O.Rt.No. 816, did not set out the basis for the specification of the amount, observed the Tribunal. The respondents herein have not challenged this order of the Tribunal and accordingly the order has become final as against the respondents.

Grounds of challenge to G.O. Rt. No. 816:-

The petitioner assails the Government order in G.O.Rt.No.816 and the order of the Tribunal upholding the said order to the extent of withholding of the whole of his pension, principally, on the

following grounds, in brief:

(a) The penalty imposed is violative of the Andhra Pradesh Civil Service (CC & A) Rules, 1963 (for short 'the 1963 Rules').

(b) As by the order of the Tribunal dated 16-11-1993 in R.P.No. 30516 of 1989 and O.A.No. 36185 of 1991, the earlier departmental inquiry initiated against him was declared to have been 'closed' in view of the abnormal and inexplicable delay in the processing of the inquiry, no fresh departmental inquiry could validly be initiated, leading to the issuance of G.O.Rt.No.816.

(c) Under the 1963 Rules, it is the conduct of an employee, in the course of discharge of his official duties that gives rise to a cause of action either to initiate a departmental inquiry or to proceed against him in a competent criminal court for an offence under penal provisions. Conviction in a criminal case cannot *per se* provide an independent cause of action for initiating departmental inquiry under either the 1963 Rules or the Pension Rules.

(d) Pursuant to the earlier departmental inquiry, the petitioner was imposed the penalty of recovery of Rs.11,814-12 Ps. (which amount was paid by him), as recorded in the judgment dated 16-11-1993 in R.P.No. 30516 of 1989 and O.A.No. 36185 of 1991. Hence initiation of fresh proceedings under the Pension Rules in respect of the same species of misconduct, is illegal and unsustainable,

(e) On the identical set of allegations, which led to his prosecution and conviction in C.C.Nos. 224 to 226 of 1990, earlier, departmental proceedings were initiated against him and were concluded as 'closed' pursuant to the judgement of the Andhra Pradesh Administrative Tribunal dated 16-11-1993. It is, therefore, incompetent to hold another departmental inquiry under Rule 9 of the Pension Rules.

(f) As there is no misappropriation or embezzlement of Government money, the extreme punishment of withdrawal of the full service pension permanently, is arbitrary, and

(g) In any event, the punishment of withdrawal

of the entirety of his pension permanently is grossly disproportionate and unsustainable in the circumstances and particularly in view of the fact that the petitioner had undergone the trauma of either successive departmental inquiries or prosecution for over twenty two (22) years (1980 to 2002).

Sri Prabhakar Rao the petitioner has filed and argued the writ petition in person. We have heard the petitioner and the learned Government Pleader for the respondents. Having regard to the issues involved and the fact that the petitioner is a lay person, we have requested Sri S.Satyanarayana Prasad, learned Senior Counsel, to assist us in the case. Sri Prasad has rendered valuable assistance in the matter. We place on record our appreciation for the assistance rendered by the learned Senior Counsel, *amicus curiae*.

As the impugned order of the State Government in G.O.Rt. No.816 is in purported exercise of Rule 9 of the Pension Rules and as challenged by the petitioner, is also based *inter alia* on the interpretation and the scope of the said rule, the provisions of Rule-9 of the Pension Rules to the extent relevant and material for the purposes of this

writ petition, are set out herein.

*" **9. Right of Government to withhold or withdraw pension**:-*
(1) The State Government reserves themselves the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused, to the Government and to the local authority if, in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon reemployment after retirement :

Provided that the Andhra Pradesh Public Service Commission shall be consulted before any final orders are passed;

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the limit specified in sub-rule (5) of Rule 45.

(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the State Government, that authority shall submit a report recording its findings to the State Government.

Note:- The function of the disciplinary authority is only to reach a finding on the charges and to submit a report recording its findings to the Government. It is then for the Government to consider the findings and take final decision under this rule. In case Government decide to take action under this rule in the light of the findings of the disciplinary authority, the Government will serve the person concerned with the show-cause notice specifying the action proposed to be taken under this rule and the person concerned will be required to submit his reply to the show cause notice within such time as may be specified by the Government. The Government will consider the reply and consult the Andhra Pradesh Public Service Commission. If as a result of such consideration proceedings will be issued in the name of the Government.

(b) The Departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment :

(i) shall not be instituted save with the sanction of the Government;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the State Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) [x x x x]

(4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2) , a provisional pension as provided in Rule 52 shall be sanctioned.

(5) Where the State Government decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule –

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) Judicial proceedings shall be deemed to be instituted–

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognisance, is made; and

(ii) in the case of civil proceedings, on the date the plaint is presented in the Court. ”

The departmental proceedings against the

petitioner appear to have been pursued with the maximum level of incompetence, negligence and indifference possible. The unending process of the departmental proceedings commencing with the suspension pending enquiry of the petitioner on 13.6.2000 came to an end by the declaration of the Tribunal by the common order dated 16.11.1993 in R.P. No. 30516/89 and OA No. 36185/91. As despite the interim order dated 13.8.1991 in OA No. 36185/91 that the departmental proceedings should be completed within six months failing which it will be deemed as dropped, the State failed to conclude the departmental proceedings even by 16.11.1983, 13 years after commencement. In the circumstances by the judgment dated 16.11.1993 the Tribunal declared that the disciplinary proceedings against the petitioner shall be treated as having been closed. Consequently the Tribunal directed that action be taken to release the full pension, the arrears of pension and also to pay the petitioner the commutation of pension benefits within a period of 3 months from the date of receipt of its order. However, the Tribunal also observed as under:

" So far as any subsequent proceedings are concerned, they should not be linked up with the earlier proceedings and the respondents are at liberty to proceed as per law, if they so desire."

The SLPs preferred by the State against the common order of the Tribunal dated 16.11.1993, were dismissed by the Supreme Court on 6.2.1995. It is also not in dispute that the petitioner's pension was determined and paid as also the benefits of commutation.

Despite the fact that the petitioner had retired on superannuation on 30.6.1991 and oblivious to the declaration of the Tribunal (Judgment dated 16.11.1993) that the disciplinary proceedings against him are treated as having been closed, the State Government by a memo dated 27.12.1995 called upon him to peruse some records and submit his explanation in respect of the disciplinary proceedings earlier initiated. This memo dated 27.12.1995 was challenged by the petitioner in OA No.400/96 and the Tribunal granted stay of further proceedings, by an order dated 30.1996. Thereafter the petitioner was convicted for an offence u/Sec.409 IPC by the judgment dated 16.7.1997 in C.C. Nos. 224 to 226 of 1990. More than 13 months after the conviction by the criminal court, a show cause notice dated 22.8.1998 was issued by the State Government, consequent on his conviction and sentence, proposing permanent withdrawal of the petitioner's full pension u/Rule 9 of

the Pension Rules. The petitioner challenged the show cause notice dated 22.8.1998 in OA No. 7219/98. As the Tribunal did not grant any interim direction, he submitted his explanation dated 26.10.1998, to the show cause notice. Final orders were issued withdrawing the entirety of future pension of the petitioner by the order in G.O.Rt. No.816 dated 3.8.2002. By the order dated 20.12003 in OA No.400/96 (challenging the show cause notice dated 27.12.95) was disposed of by the Tribunal in view of the fact that pension arrears and commutation benefits were already granted to the petitioner and therefore no further orders were necessary.

From the chronology of events it is apparent that the disciplinary proceedings initiated against the petitioner under the provisions of the 1963 Rules, when he was in service and which proceedings were sought to be continued after his retirement, presumably u/Rules 9(1) and (2)(a) of the Pension Rules, was abandoned in recognition of the declaration contained in the judgment of the Tribunal dated 16.11.1993. However, in view of the observations contained therein and assuming availability of power u/Rule 9(1) of the Pension

Rules, a show cause notice dated 22.8.1998 was issued proposing action for withdrawal of the future pension.

The order in G.O.Rt. No. 816, prospectively and permanently withdrawing the pension of the petitioner, is not pursuant to any proceedings under the 1963 Rules; pursuant to departmental proceedings initiated under 1963 Rules and continued u/Rule 9(2)(a) of the Pension Rules or even initiated u/Rule 9(1) r/w Rule 9(2)(b) of the Pension Rules. Facially and in substance the permanent and full withdrawal of pension prospectively is on account of the petitioner having been convicted of an offence u/Sec.409 IPC in CC Nos. 224 to 226 of 1990.

In the above circumstances the petitioner's challenge to the order in G.O.Rt. No. 816 on grounds (A) to (E) supra, does not commend acceptance by this court. it is not an independent assessment of the petitioner's conduct during his service that has led to the impugned order of withdrawal of pension but his conviction in CC Nos. 224 to 226 of 1990 for an offence u/Sec. 409 IPC, which undeniably constitutes a finding of guilt of a grave misconduct during the petitioner's period of service. The withdrawal of pension in these circumstances is

wholly competent in view of the powers vouchsafed to the Government u/Rule 9 of the Pension Rules.

One of the grounds (ground (D) supra) is that as the petitioner was already imposed the penalty of recovery of Rs.11,814.12 and which amount had been paid by him as recorded in the judgment dated 16.11.193, no proceedings could be initiated against him u/Rule 9 of the Pension Rules. This contention is clearly without substance or force. The Tribunal (in the judgment dated 16.11.1993) despite noticing that Rs.3,000 had already been recovered from the petitioner and he had expressed no objection for adjustment of the balance amount of Rs.8,000 towards the total loss allegedly caused to the Government by his conduct, nevertheless preserved the liberty of the State Government to proceed against the petitioner in any subsequent proceedings, as per law. The only limitation imposed is that the subsequent proceedings should not be linked up with the earlier proceedings, which were declared as closed. The initiation of proceedings to withdraw permanently the entirety of his future pension is not a proceeding linked to the earlier proceedings. It is an independent proceedings consequent on the conviction of the petitioner for the grave misconduct of an offence

u/Sec.409 IPC, in CC Nos. 224 to 226 of 1990.

On behalf of the petitioner it is pleaded (ground (F) supra) that there was no misappropriation or embezzlement of Government money and therefore the extreme punishment of withdrawal of full pension permanently, is arbitrary. We find no error in the order of the Government withdrawing the pension of the petitioner by the impugned order. Both the trial court in CC No. 224 to 226 of 1990 as well as this court in Crl.R.C. No. 1369 & 1374 of 2002 concurred in the conclusion as to the petitioner's guilt of the offence u/Sec. 409 IPC. The conviction recorded by the trial court was confirmed in the revision by this court. It is therefore futile for the petitioner to contend that he was not involved in the misappropriation or embezzlement of Government money. This contention also fails.

The petitioner urged that the punishment of withdrawal of the entirety of his pension is grossly disproportionate in the circumstances including that he had been undergoing the trauma of successive departmental proceedings or prosecution since 1980. We find some justification in this plea of the petitioner. In the counter affidavit filed to MA No.510/892 (filed by the applicant in OA No.

36185/91) the State had admitted that the ultimate loss for which the petitioner was directly responsible is Rs.11,814.12 (as recorded in the judgment dated 16.11.93). This amount was paid by the petitioner as has also been recorded in the said judgment. He has been convicted, sentenced and fined in the first instance which was later modified to a higher quantum of fine in the revisional order of this court, which fine the petitioner has paid. His misdemeanour that led to his conviction has to that extent been purged and the petitioner has paid his debt to the society *qua* the conviction and fine. Insofar as the departmental proceedings are concerned he has undergone the trauma of the process for well over two decades, for no fault of his and solely on account of the patent and indefensible incompetence of the State in conducting the departmental proceedings. He has also undergone a prolonged period of suspension pending enquiry and the consequent trauma. Despite his retirement on superannuation on 30.6.19991, he received his pension and other terminal benefits only some time in or after March 1995.

We are of the considered view that the withdrawal of the total pension of the petitioner prospectively constitutes a grossly disproportionate

punishment in the totality of circumstances. On this view of the mater normally it would be appropriate to set aside the order in G.O. Rt. No.816 and direct the State Government to consider afresh the aspect as to withdrawal of what quantum of pension would be appropriate in the circumstances. However, having regard to the past track record of the State Government in the matter as also the fact that the petitioner had retired more than 13 years ago, we are inclined to pass the following order, in modification of the order of the A.P. Administrative Tribunal dated 8.9.2003 in O.A. No. 10183 of 2002, :

Permanent and prospective withdrawal of the pension of the petitioner to the extent of 50% of the pension the petitioner was drawing prior to issuance of G.O. Rt. No.816, dated 3.8.2002, shall be withheld with effect from the date of G.O. Rt. No. 816 i.e., 3.8.2002. The respondents shall release the balance of 50% of the pension of the petitioner that has been withheld pursuant to the order in G.O. Rt. No. 816 and shall, in future, pay the petitioner 50% of the pension due and payable to him but for G.O. Rt. No. 816.

The order of the A.P. Administrative Tribunal dated 8.9.2003 in O.A. No. 10183 of 2002 is modified to the extent above. There shall be no

order as to costs.

Dated:21-09-2004 ----------

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Pvsn

J.Chelameswar, J

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G.

Raghuram, J

To

1. The Secretary to Government, A.P.,
   Agriculture & Cooperation Department,
   A.P. Secretariat Buildings,
   Hyderabad.
2. The Commissioner & Director of Agriculture,
   Andhra Pradesh, OppL L.B.Stadium,
   Gunfoundry, Hyderabad.
3. The Assistant Director of Agriculture,
   (Soil Conservation), Hanumakonda, Warangal.
4. Two copies to Government Pleader for Service-I,
   High Court Buildings, Hyderabad. (OUT)
5. The Registrar, A.P. Administrative Tribunal, Hyderabad.
6. Sri S.Satyanarayana Prasad, Amicus Curiae
7. 2CD copies